IN THE

Supreme Court of the United States

October Term, 1957

No. 378

JAMES C. MATTLES,

Petitioner,

v.

UNITED STATES OF AMERICA.

On petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

SUPPLEMENTAL MEMORANDUM

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One of the questions presented in the petition for writ of certiorari previously filed in this case is "whether an affidavit of good cause is a jurisdictional prerequisite to the initiation of a denaturalization proceeding."

On December 31, 1957, the Court of Appeals for the Ninth Circuit handed down an opinion in *United States v. Diamond*, No. 15,393. This decision, rendered on appeal by the Government, upholds a dismissal of a complaint in a denaturalization case upon the ground that the affidavit of good cause must be attached to the original complaint.

It would appear that this decision is in conflict with the decision of the Court of Appeals for the Second Circuit in the instant case. While the Court of Appeals in the *Diamond* case sought to distinguish the instant case on the ground that it presents different facts, we believe that the

principles covering the two decisions are in conflict. It seems to us that necessarily implied in the *Diamond* decision is the view that the affidavit of good cause is a jurisdictional prerequisite to the filing of the action. However, in the instant case, the Court of Appeals refused to follow this view.

A copy of the court's decision in the *Diamond* case is appended.

Respectfully submitted,

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Appendix

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15,393—Dec. 31, 1957

UNITED STATES OF AMERICA,

Appellant,

vs.

DAVID DIAMOND, etc., and FREEDA DIAMOND, etc.,

Appellees.

Appeals from the United States District Court
for the Southern District of California
Central Division.

Before: STEPHENS, Chief Judge; FEE and HAMLEY, Circuit Judges

STEPHENS, Chief Judge

The United States is here appealing from dismissals of these actions for denaturalization by Judge Ben. Harrison. The sole question raised concerns Section 340(a) of the Immigration and Nationality Act of 1952, 8 U. S. C. A. 1451(a). We quote the applicable portion of the statute:

> "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of sec

> tion 1421 of this title . . . for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation. . . ."

The complaints in these actions were filed on November 1, 1954, without the prior filing of an affidavit separate from the sworn to complaint. On March 1, 1955, the defendant-appellee David Diamond filed a motion to dismiss the complaint on the ground that the court lacked jurisdiction because the United States Attorney had not filed with the complaint an affidavit showing good cause. A similar motion was filed by defendant Freeda Diamond on March 25, 1955. The trial judge denied both motions relying on an opinion of this Court. *Schwinn* v. *United States*, 112 F. 2d 74, affirmed 311 U. S. 616. The appellees then filed their answers: the cases were consolidated for trial; and the trial commenced on February 28, 1956. On the opening day of the trial, appellant offered affidavits of good cause in evidence, and they were accepted by the trial judge over objection by counsel for appellees. It was stipulated by the parties that the United States Attorney had these affidavits in his possession at the time the complaints were filed, and that they were shown to counsel for defendant-appellee Freeda Diamond at the pre-trial hearing, and that counsel was informed that the affidavits would be offered during the trial. Counsel for the Diamonds were given a copy of these affidavits on February 29, 1956, and the trial proceeded. At the conclusion of the government's case, the Diamonds rested, and the court took the case under submission. The court and counsel discussed the case of *United States* v. *Zucca*, 351 U. S. 91, and counsel were directed to file briefs on its effect on the doctrine of the *Schwinn* case. Finally Judge Harrison dismissed both the actions without prejudice, viewing *Zucca* as holding that the filing of the affi-

davit prior to institution of action was an indispensable requirement. The Court could have done nothing else in the face of the following language (of Chief Justice Warren) in the *Zucca* opinion:

(page 100)

"We believe that, not only in some cases but in all cases, the District Attorney must, as a prerequisite to the initiation of such proceedings, file an affidavit showing good cause."

Chief Justice Warren also says, on page 99:

"The mere filing of a proceeding for denaturalization results in serious consequences to a defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person, once admitted to American citizenship, *should not be subject to legal proceedings to defend his citizenship without a preliminary showing of good cause.*" (Emphasis supplied.)

Since the *Zucca* decision, the requirement that an affidavit be filed has been discussed in *Nowak* v. *United States*, 6 Cir., 238 F. 2d 282, certiorari granted 353 U. S. 922; *United States* v. *Lucchese*, 2 Cir., 247 F. 2d 123; *United States* v. *Matles*, 2 Cir., 247 F. 2d 378; *United States* v. *Costello*, 2 Cir., 247 F. 2d 384. While these cases are interesting, they present facts somewhat different from those of our case, and a detailed analysis would be fruitless.

The judgment is affirmed.

FEE, Circuit Judge:

I reserve the right to file a separate opinion.

(Endorsed:) Opinion. Filed Dec. 31, 1957.

Paul P. O'Brien, Clerk.